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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1000

NOBLE DRILLING CORPORATION, ET AL.,
Petitioners,

versus

VERSIE KIMBLE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners, Noble Drilling Corporation, Chevron Oil Company and Aetna Casualty & Surety Company, pray that a writ of certiorari issue herein to review the judgment of the United States Court of Appeals for the Fifth Circuit, dated September 23, 1969, (Appendix "A") affirming the judgment of the district court, and the denial of the application for rehearing dated November 4, 1969 (Appendix "B").

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit, No. 26357, is unreported as of this date; it is reprinted in full as Appendix "A" hereof.

JURISDICTION

On September 23, 1969, the United States Court of Appeals for the Fifth Circuit Affirmed the Judgment of the United States District Court, Eastern District of Louisiana, which judgment was adverse to petitioners, the Court of Appeals for the Fifth Circuit denied petitioner's application for rehearing on November 4, 1969.

The opinion of the Court of Appeals involved important questions concerning the interpretation and application of general maritime law principles and are in conflict with applicable decisions of this Court and should be settled by this Court.

Therefore, the jurisdiction is sought pursuant to the provisions of 28 U.S.C.A. 1254 (1); June 25, 1958, C.646 Stat. 928.

QUESTIONS PRESENTED

The questions presented are:

I. Whether the Court of Appeals incorrectly held that to recover against a ship owner on a maritime claim, a claimant must be a "seaman".

II. Whether the Court of Appeals incorrectly held that under the recent Supreme Court decision of *Rodrigue vs. Aetna Casualty & Surety Company*, 37 Law Week 4505 ____ U.S. ____, 89 S.Ct. 1835, 23 L.Ed. 2d 360, the Jones Act 46 U.S.C.A. arise to accidents occurring on stationary platforms in the Gulf of Mexico.

CONSTITUTIONAL PROVISIONS AND STATUTES

The statutes involved in this matter are;

1. The Jones Act, 28 U.S.C.A. 688
2. The Submerged Lands Act, 43 U.S.C.A. 1333
3. The Longshoremen's and Harbor Workers' Act, 33 U.S.C.A. 901

STATEMENT OF CASE

This suit was brought by Versie Kimble against Noble Drilling Corporation, its insuror, Aetna Casualty and Surety Company, and the Chevron Oil Company under the Jones Act, 46 U.S.C.A. 688, and the General Maritime Law for damages because of personal injuries received by Versie Kimble on two (2) occasions while working on stationary platforms located in the Gulf of Mexico, the first occasion being on September 23, 1965, and the second on December 11, 1965. On September 23, 1965, Kimble was injured while working on "G" structure owned by Chevron Oil Company, which structure had a tender alongside designated as the S-24, and on December 11, 1965, Kimble was injured aboard "H" structure which had a tender alongside of it designated as the S-26.

The physical facts and the relationship of the parties surrounding both accidents are the same. Noble Drilling Corporation, Kimble's employer, had contracted with Chevron Oil Company to drill oil wells from the stationary platforms. The stationary platforms were owned by Chevron Oil Company and were permanently

affixed to the Gulf floor. Chevron Oil Company also owned and provided converted LSTs to service the drilling operations taking place from the platforms. Essentially, the converted LSTs are special purpose vessels providing warehouse and sleeping and living space for personnel and equipment at the drilling sites.

The tenders, S-24 and S-26, were manned fully by personnel of Chevron Oil Company or personnel of contractors, hired by Chevron. Aboard the tenders were captains and crews referred to as deckhands who served the navigational functions of the ships and who saw to their maintenance. Roustabout crews were aboard who did the maintenance work such as chipping and painting and keeping the holes and decks clean. These roustabout crews did all of the loading and unloading of supplies and equipment from and to the vessels. Lastly, Chevron Oil Company hired catering crews who prepared the meals and took care of the living areas aboard the ships.

As heretofore stated, Noble had contracted with Chevron Oil Company to drill the wells and to complete them. The purpose of the Noble personnel at the drilling sites was to operate the drilling and completion rigs located upon the fixed structures. They did not perform any work on the tenders except that one of the Noble men from time to time would go onto the tender to operate one of Noble's mud pumps located thereon.

On "G" structure at the time of Kimble's first accident, Noble had a completion rig and a larger drilling rig. The completion rig was used to complete the wells drilled with the larger rig. Except for a small mud

pump located on the tender all of Noble's equipment making up both rigs was on the platform. Noble did have the use of a small locker called the "bird cage" on the tender which it used as a storeroom.

The small mud pump located on the tender was the main pump for the completion rig and was also utilized in connection with the larger drilling rig to pump mud up to the tanks on the platform when needed.

Kimble was hired as a driller in the completion crew. He was in charge of his crew and reported to his tool pusher. The driller does not ordinarily operate any of Noble's equipment on the tender; however, in this particular instance Versie Kimble stated that during the completion of the rig, he most probably instructed a member of his crew, Sidney Wilkerson, on how to align the pumps and to operate same. The driller's duties are performed aboard the platform.

On December 5, 1965, at the time of the second injury, Kimble was a crew member working in the drilling crew of Noble's drilling rig — the same setup that existed on "G" structure as did on "H" structure. The testimony reflects that since Kimble had arrived at platform "H" he had done no work whatsoever aboard the tender and he further admitted that it would be speculation as to whether or not he would be called upon to do any work whatsoever on the tender.

At the time of his injuries on September 23, 1965, Kimble while aligning a blowout preventer on the stationary platform, fell 12 to 15 feet to a portion of the drilling platform below, where he received a separa-

tion of the right shoulder. He claimed that the cause of his fall was that he was provided a defective wrench because the wrench had worn jaws and that Noble was negligent thereby in failing to have a suitable replacement for the wrench, and further that Noble was negligent in failing to provide him with suitable scaffolding needed to sit on while aligning the blowout preventer.

On December 11, 1965, Kimble was injured on another stationary platform when a heavy hook was allowed to fall from the derrick, striking him on his right shoulder. He contended that the negligence of Noble caused the heavy hook to strike the plaintiff.

The claim was made against Chevron that it failed to provide the plaintiff with a safe place in which to work and in failing to provide the plaintiff with a walkway in the area in which he was injured on September 23, 1965. On December 11, 1965, Chevron was claimed to have been negligent in failing to supervise.

Noble Drilling Corporation defended this suit on the basis that Kimble was not a seaman or member of the crew of any vessel at the time of either injury and, alternatively, that the injuries sustained by him resulted from his own negligence. In addition, Chevron Oil Company defended on the basis that it was not negligent and had no duty to furnish Kimble with a safe place in which to work.

After a trial of the case on its merits, the jury returned a verdict holding that Kimble was a member of the crews of the S-24 and S-26 and in relation to

both accidents, found that Noble was negligent. It found Chevron Oil Company negligent in connection with the first accident; however, it did not find Chevron negligent in connection with the second accident. The jury went on to award damages in connection with the first accident to the extent of $35,000.00 and damages as a result of the second accident in the sum of $1,500.00.

At the same time, the jury found in relation to the first accident that Kimble's own negligence contributed to his injuries to the extent of 33-1/3%.

Defendants' motions for directed verdict were denied during trial and thereafter judgment was entered in accordance with the Jury's findings.

Defendants' motions for judgment notwithstanding the verdict and for a trial were denied and defendants' appeal to the Court of Appeals for the Fifth Circuit for relief. The judgment was affirmed and an application for rehearing was denied.

THE FEDERAL QUESTIONS

The injury involved in this litigation occurred in the Gulf of Mexico on the outer continental shelf of the United States.

The applicability and nonapplicability of Federal Statutes are involved, along with General Maritime Law concerning allowance of maintenance and cure.

ARGUMENT

A recognized and valid aim of the law, as expressed both by statute and by appellate judicial decisions, is to afford guidance and direction to individuals or legal entities operating under its rule. Those individuals or entities are blessed or cursed with the assumption that they know what the law is because they will be penalized for a violation of it, be that penalty physical incarceration for a crime or a money judgment for civil liability. If this aim is still valid then surely the decision in the instant case violates it since it does little but add to the confusing farrago of decisions following *Offshore Co. v. Robison*, 5th Cir. 1959, 266 F.(2) 769, and, more importantly, is the first retrogressive step from the advance made so recently by Supreme Court in *Rodrigue v. Aetna Casualty & Surety Company*, 37 Law Week 4505, 89 S.Ct. 1835, 23 L.Ed. 2d 360.

The basic error made by the Court of Appeals in its appellate decision stems partly from viewing Kimble's claims against Chevron and against Noble Drilling Corporation as dependent or contingent on each other. These claims can be and should have been considered separately not only to resolve the instant controversy but also to provide accurate guidance to other parties or other litigants whose activities encompass offshore mineral exploration or the settlement of controversies stemming therefrom.

With regard to Kimble's claims against Chevron Oil Company the entire matter is concluded by the Court of Appeals in a footnote the text of which is so confusing

or so inaccurate or both that it cannot be overlooked. It reads:

> "Kimble's theory of recovery from Chevron is not entirely clear. At one point, he states that Chevron's liability under general maritime law does *not* depend upon his status as a seaman, a claim that, upon its face, would seem to imply that liability rested in some manner upon categorizing the stationary platforms upon which the accidents happened as "vessels." This argument, however, is foreclosed by the recent decision of the Supreme Court in Rodrigue v. Aetna Casualty & Surety Co., 1969, ____ U.S. ____, 89 S. Ct. 1835 ____ L. Ed. 2d ____. Therefore, we hold that Chevron's liability under general maritime law can rest *only* upon the jury's finding that Kimble was a seaman, which finding meant that he was entitled to recover against Chevron as the owner of the ship." (Emphasis added.)

Contrary to the holding stated above it is submitted that Kimble's claim is entirely clear: It is a maritime tort claim. And if Kimble seems to suggest that Chevron's liability does not depend upon his status as a seaman, then respondent may well suggest this because *Rodrigue*, supra, does not foreclose this proposition. It is not now nor has it been the law that Chevron's liability "can rest *only* upon the jury's finding that Kimble was a seaman."

Any person can recover against a shipowner on a maritime tort if he is injured on the vessel. *Katz v.*

Cie Generale Transatlantique, 271 F. 2d 590 (5th Cir. 1959). *Any* person can recover under Article 2315 of the Louisiana Civil Code if he is injured through a third party's negligence on a stationary platform on the outer continental shelf. *Rodrigue v. Aetna Cas. & Sur. Co.*, supra. Any *seaman* can recover under the maritime law against a shipowner for injuries sustained on land *but only* if that person is a seaman in the service of the ship and is claiming against his shipowner-*employer*. *Central Gulf Steamship Corp. v. Sambula*, 405 F. 2d 291 (5th Cir. 1968).

Chevron was not the employer of Kimble. This was never in dispute. He was injured on a stationary platform. That was never in dispute. That stationary platform is not a vessel. This is not a subject of dispute. *Dronet v. Reading and Bates Offshore Drilling Co.*, 367 F.2d 150 (5th Cir. 1966).

The effect of this obvious error is not merely academic in view of the *Rodrigue* decision. Kimble was first a person making a claim against Chevron, a party who was not his employer. He was making a claim for an injury sustained on land. But further and most importantly the jury found him to be *contributorily negligent*. This completely bars a judgment against Chevron.

This Court of Appeals misread *Rodrigue* if it believed that Louisiana law does not apply. For that decision established that fixed platforms on the outer continental shelf were artificial islands governed by the Outer Continental Shelf Lands Act. The latter act incorpo-

rates and federalized the law of the adjacent state where other federal law is not applicable.

Here the general maritime law does not apply because the injury was on land. *Rodrigue v. Aetna Cas. & Sur. Co., Dronet v. Reading and Bates, supra.* [It is nowhere suggested or inferred that this land-based injury was a result of an unseaworthy appurtenance of a vessel. See *Deffes v. Federal Barge Lines, Inc.*, 361 F. 2d 422 (5th Cir. 1966)]. The Jones Act does not apply to Chevron because Kimble was not an employee of that company. The Longshoremen and Harbor Workers Act as incorporated by the Outer Continental Shelf Lands Act does not apply because Chevron was not Kimble's employer. Thus, the only law which can apply is obviously Louisiana state law employed as "surrogate" Federal Law. *Since state law applies the jury's findings of negligence on the part of the plaintiff estop his claim against Chevron. Thompson v. Morgan,* 167 La. 335, 119 So. 69 (1928).

Petitioners argue that the stationary drilling platform on which Kimble was injured was an artificial island and that because of *Rodrigue v. Aetna Cas. & Sur. Co.*, the law governing these platforms is not admiralty law but the law of Louisiana. The Court of Appeals admitted the accuracy of this contention but held that this does not help petitioner's case. This is so apparently because "[t]he The Outer Continental Shelf Lands Act does not oust admiralty law having a basis of applicability independent from the location of the platforms at sea; . . ."

It is true that the Outer Continental Shelf Lands Act does not oust admiralty law where admiralty law applies. On the other hand, the Court of Appeals did not correctly read *Rodrigue* the focal point of which was that admiralty law has no application "of it own force" on these artificial islands on the outer continental shelf of the Gulf of Mexico.

Because Kimble alleges a claim under the Jones Act against Noble Drilling Corporation the Court of Appeals simply assumed the applicability of that Act without reviewing the history of the Act and without taking into consideration the real meaning of *Rodrigue*.

The court cited as authority for the proposition that the Jones Act applies, even though this accident occurred on land, the case of *Central Steamship Corp. v. Sambula, supra*. But in *Sambula* the status of the claimant was not at issue. He was clearly a "blue water" seaman whose injury (loss of sight in one eye) was sustained on board the ship. The Jones Act was the starting point.

The Jones Act was never intended to apply to this type of claimant who is injured on a stationary platform; that the Supreme Court in the *Rodrigue* affirms this proposition; that the jurisprudential development of the Jones Act does not allow a claimant such as Kimble to recover under the auspices of that legislation; and that *Offshore Co. v. Robison* is not valid authority to sustain the Court of Appeal's opinion.

Thus, the first question is: Does the Jones Act apply

of its own force to an offshore oil worker injured on a stationary platform? If it does not, then the Outer Continental Shelf Lands Act tells us that the law of Louisiana applies and his claim is barred.

After passage of the Jones Act the Supreme Court allowed a longshoreman to recover damages thereunder. *International Stevedoring Corp. v. Haverty,* 272 U.S. 52 (1926). Shortly subsequent thereto Congress advised the Court, through passage of the Longshoremen and Harbor Workers Act, that workers not permanently employed by shipowners as crewmembers and only transitorily employed on vessels were not entitled to use the Jones Act as a basis for recovery. The Supreme Court acknowledged this. *Swanson v. Marra Bros. Inc.,* 328 U.S. 1 (1945).

In a further development Congress passed the Outer Continental Shelf Lands Act which geographically enlarges the area of application of the Longshoremen and Harbor Workers Act to accidents occurring on stationary platforms over the water but located off the coast of the adjacent state. Recognizing the confusion and conflicting claims being made in litigation arising from accidents occurring on these structures (*E.g. Pure Oil Co. v. Snipes,* 293 F. 2d 60 (5th Cir. 1961)) the Supreme Court acknowledged in *Rodrigue* that Congress, by passage of the Outer Continental Shelf Lands Act, intended that offshore oil workers employed on these structures "unlike transitory seamen" had close connections with the adjacent states in which their families lived. State law (as federal law) was intended to apply. Thus, *Rodrigue* with reference to land-based offshore oilworkers on stationary platforms becomes

a latter-day *Swanson* which dealt with land-based longshoremen. It is clear then that the Jones Act was not intended to apply in this situation.

Secondly, as developed by case law it is clear that a jury as a matter of law, is not entitled to find Kimble a Jones Act seaman. The accidental presence of a tender near the platform does not make him any more a Jones Act Seaman than does the constant presence of a ship alongside a wharf make a longshoreman a Jones Act seaman.

The first prerequisite to get to the jury is that the injured workman be assigned "permanently" to the vessel. *Offshore Co. v. Robison.* This prerequisite has not been overlooked in other cases as it has herein. *Fontenot v. Halliburton Co.*, 264 F. Supp. 45 (W. D. 1967); *Perez v. Marina Transport Lines*, 160 F. Supp. 853 (E. D. La. 1958); *Lowe v. California Co.*, 296 F. Supp. 1264 (E. D. La. 1969). Nor have courts avoided the question on the basis that it is always simply another "jury question". *Rotolo v. Halliburton Co.*, 317 F.2d 9 (5th Cir. 1963).

This court by the instant decision perpetuates the anomaly that a longshoreman who spends 95% of his time on a vessel cannot be a Jones Act seaman whereas an offshore oilworker, like Kimble, who spends a maximum of 5% of his time on a vessel can be one.

Finally, the Court of Appeal invalidly cited *Offshore Co. v. Robison* as authority for its decision. *Robison*, it must be recalled, was permanently employed on a floatable, movable drilling rig. To cite *Robison* as

authority in this case is to imprecisely distinguish the "special craft" which is subject to the viscissitudes of the sea from an "artificial island" which is rigidly fixed to land; or, worse, it is to make no distinction at all.

It can thus be seen that the Jones Act was never intended to apply "of its own force" to an artificial island or to the workers thereon and that the Outer Continental Shelf Land Act makes the applicable federal law the law of the adjacent state from which those workers come. Furthermore, even under the jurisprudential developments of the Jones Act in relation to offshore oil workers, the law does not intend that workers such as Kimble should even be allowed to go to the jury with the specious claim that they are seamen as contemplated under the Jones Act. *Thomas v. Peterson Marine Service Co.*, 411 F. 2d 592 (5th Cir. 1969).

CONCLUSION

In the conclusion, it is submitted that the law does not intend and the courts should not permit this state of confusion to continue. It is basically unfair to offshore oilworkers-claimants as well as offshore contractor-defendants to have to work under circumstances for which they cannot plan because the law is so confused. A producing oil company, like Chevron Oil Company, cannot adequately plan to defend itself from accidents which occur on its stationary platforms if one court says that the law of the adjacent state applies but another court says that general maritime law will apply. A drilling contractor, such as Noble

Drilling Corporation, cannot adequately plan to protect its employees by providing longshoremen's benefits when the employee, though he spends 95% of his time on a stationary platform, can be found to be a member of the crew of a tender which has its own crew and which is coincidentally attached as occurred in *Creel v. Drill Tender Jack Cleverly,* 264 F. So. 98 (Wd. La. 1966) and in *Noble Drilling Co. v. Smith,* 412 F.2d 952, (5th Cir. 1969), certiorari denied, Nov. 10, 1969. At the same time the injured employee is in a precarious position of not receiving weekly compensation benefits and medical expenses while being advised by his attorney to make a claim under the Jones Act which claim, though made under the exact conditions as in the *Creel* and *Smith* cases, may yield directly opposite results as they did in *Ross v. Delta Drilling Co.,* 213 F. Supp. 270 (Ed. La. 1962); *Johnson v. Noble Drilling Co.,* 264 F. Supp. 104 (Wd. La. 1964); and, *Freeman v. Aetna Cas. & Sur. Co.,* 398 F. 2d 808 (5th Cir. 1969).

For the foregoing reasons, this petition for certiorari should be granted to the end that this Honorable Court will review the decision below.

Respectfully submitted,

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CERTIFICATE

I, the undersigned member of the Bar of this Honorable Court, do hereby certify that copies of the above and foregoing Petition for Certiorari have been served upon petitioner, Versie Kimble, by depositing the same, postage prepaid, in the United States mail, addressed to his attorney, Donald Organ, Esq. National Bank of Commerce Building, New Orleans, Louisiana 70130, at New Orleans, Louisiana, this 23 day of December, 1969.

W. Ford Reese

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APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 26357

VERSIE KIMBLE,
Plaintiff-Appellee,
versus

NOBLE DRILLING CORPORATION, ET AL,
Defendants-Appellants.

Appeal from the United States District Court for the Eastern District of Louisiana

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(September 23, 1969)

Before THORNBERRY and DYER, Circuit Judges, and FISHER, District Judge.

THORNBERRY, Circuit Judge: The main question presented by this admiralty appeal is whether appellee Versie Kimble could properly be found to have been a seaman for purposes of the Jones Act and general maritime law at the time of his injuries. Kimble was injured twice while in the employ of Noble Drilling Company, both times while working on stationary

drilling platforms at sea, and in both instances the jury found that he was a seaman and that Noble's negligence had contributed to his injuries. It also found that negligence of appellant Chevron Oil Company was a proximate cause of one of the accidents. In accordance with the jury's verdict, the trial court rendered judgment for appellee Kimble against Noble under the Jones Act and against Chevron under the general maritime law,[1] overruling appellant's motions for directed verdict and for judgment notwithstanding the verdict. We affirm.

Chevron Oil Company conducts large offshore oil recovery operations in the Gulf of Mexico for which it hires a number of independent contractors. It owned the two drilling platforms at issue here, platforms "G" and "H," together with their tenders the S-24 and the S-26, both of which were converted LST's. The drilling platforms were permanent, immobile artificial islands affixed to the ocean floor, but the tenders, although they remained adjacent to the platforms for the most part, were mobile vessels that could be shifted from

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[1]Kimble's theory of recovery from Chevron is not entirely clear. At one point, he states that Chevron's liability under general maritime law does not depend upon his status as a seaman, a claim that, upon its face, would seem to imply that liability rested in some manner upon categorizing the stationary platforms upon which the accidents happened as "vessels." This argument, however, is foreclosed by the recent decision of the Supreme Court in Rodrigue v. Aetna Casualty & Surety Co., 1969, ——— U.S. ———, 89 S. Ct. 1835, ——— L.Ed.2d ———. Therefore, we hold that Chevron's liability under general maritime law can rest only upon the jury's finding that Kimble was a seaman, which finding meant that he was entitled to recover against Chevron as the owner of the ship.

platform to platform or taken into open sea in rough weather.

At the time of his first injury, appellee Kimble worked as a "driller" for Noble Drilling Company, which owned the drilling rigs on the platform and had been hired by Chevron to perform the actual drilling operation. As a driller, Kimble was in charge of one of the four-man crews that worked in alternating shifts on the platform. Thus he did most of his work on the platform, but there is considerable evidence in the record to support Kimble's claim that he also had substantial duties on board the tender. In particular, he had responsibility for making sure that the drilling mud, which was pumped from the mud room on the vessel, was properly mixed. As ancillary duties, therefore, he was charged with maintenance of the mud room equipment and mud pumps, with training and supervising his crew, with maintaining pipes, and with helping in connecting and disconnecting lines from the vessel to the platform when the vessel was moved. Moreover, his activities were always closely related to activity on the vessel, which served as a supply, personnel, equipment, fuel and command center for the entire drilling operation. A part of the reason for his first injury, for example, seems to have been the absence of necessary tools, which he had sent a member of his crew to fetch from the tool room on the vessel.

In addition, during his tour of duty, which was ten days long followed by five days off, Kimble was assigned a permanent room on board the vessel; he ate and slept aboard. While on board, he was subject to

the discipline of the master of the ship and underwent many of the same hazards of the sea to which other members of the crew were subjected. There is even some evidence that he was required on occasion to perform tasks that a more traditional blue-water seaman might be expected to perform, although these were probably rare.

At the time of Kimble's second injury, he was a member of a floor crew rather than a driller, and his responsibilities with respect to the mud operation were somewhat reduced. But numerous incidents of the relation of his employment to the vessel remained.

It is to be remembered that our question here is not whether these facts, of themselves, constitute Kimble, a seaman, but rather whether they support a jury finding that he is one. This question is largely controlled by *Noble Drilling Co. v. Smith,* 5th Cir. 1969 —— F.2d —— [No. 25798 slip opinion dated June 2, 1969], in which a jury award to an employee of the same drilling company involved here was upheld. The plaintiff in that case was injured while working on a drilling platform, but the Court upheld a jury finding that he was a seaman because his duties included handling mud and mud pumps on a tender and because he was assigned a permanent place on board ship. This result in the *Smith* case followed from the decision of this Court in *Offshore Co. v. Robison,* 5th Cir. 1959, 266 F.2d 769, 779, which established the following test for a case sufficient to go to the jury:

> [T]here is an evidentiary basis for a Jones Act case to go to the jury: (1) if there is evidence that the injured workman was assigned permanently to a vessel (including special purpose structures not usually employed as a means of transport by water but designed to float on water) or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips.

Under this test, coverage of the Jones Act has been extended to a wide variety of ships' personnel not traditionally thought of as seamen but subject, as are seamen, to the negligence hazards with which the Jones Act was intended to deal. The case at bar clearly falls within the province of the jury because (1) there is undoubtedly some evidence that Kimble was assigned permanently to the vessel tending the platform on which he worked in each instance and (2) there is ample evidence that the duties Kimble performed contributed to the function and mission of the tender, since its sole reason for existence was to support the platform in drilling for oil.

Appellants advance several arguments by which they seek to avoid liability. First, they assert that there is no evidence from which the jury could have found

negligence on the part of either Noble or Chevron; but we have read the record carefully and find that this contention is without merit. Secondly, they argue that *Freeman v. Aetna Casualty & Surety Co.*, 5th Cir. 1969, 398 F.2d 808, requires us to exclude oil platform workers from Jones Act coverage. *Freeman* is indeed a case in which an oil platform worker was denied the protection of the Jones Act, but the trouble with appellant's argument is that the trial court in *Freeman* did exactly what appellants ask us not to permit here: It submitted the question to the jury, and it was the jury that denied the plaintiff status as a seaman.

In a final attempt to avoid liability, appellants argue correctly that the drilling platforms on which Kimble was injured were not vessels but artificial islands. As such, appellants argue, the platforms are governed not by admiralty but by the law of the adjacent State of Louisiana, which is "borrowed" as federal law on these structures by the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. §1331 *et seq.* (1964). This issue has in fact been decided exactly as appellants urge in *Rodrigue v. Aetna Casualty & Surety Co.*, 1969, —— U.S. ——, 89 S.Ct. 1835, —— L.Ed. 2d ——, but that decision does not help their case. The Outer Continental Shelf Lands Act does not oust admiralty law having a basis of applicability independent from the location of the platforms at sea; indeed, it specifically provides that the general law of the upland state is made the applicable federal law *only to the extent* that it is "not inconsistent with . . . other Federal laws." In *Rodrigue*, the Supreme Court recognized this limitation. It simply reversed a holding that the Death on the High Seas

Act applied to workmen on oil platforms at sea because "the Seas Act does not apply of its own force under admiralty principles" to men working on land. The case at bar is distinguishable in that the Jones Act and the general maritime law do apply of their own force here; they would still apply, in fact, even if we assumed that Kimble received his injuries in the heart of the Louisiana mainland, so long as he was acting at the time as a seaman in the service of his ship. *See Central Steamship Corp. v. Sambula*, 5th Cir. 1968, 405 F.2d 291, 299. Here, Kimble's status as a seaman depended not on the location of the platforms at sea but upon his assignment to, and responsibilities on, the tender, which was unquestionably a vessel.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 26357

VERSIE KIMBLE,
Plaintiff-Appellee,
versus

NOBLE DRILLING CORPORATION, ET AL,
Defendants-Appellants.

Appeal from the United States District Court for the Eastern District of Louisiana

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(November 4, 1969)

ON PETITION FOR REHEARING

Filed: Nov. 4, 1969

Before THORNBERRY and DYER, Circuit Judges, and FISHER, District Judge.

PER CURIAM: IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1000

NOBLE DRILLING CORPORATION, ET AL,
Petitioners,

versus

VERSIE KIMBLE,
Respondent.

Brief In Opposition To Petitioners' Application For Writ Of Certiorari

BRIEF SUBMITTED ON BEHALF OF VERSIE KIMBLE, RESPONDENT

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1969

No.

NOBLE DRILLING CORPORATION, ET AL,
Petitioners,

versus

VERSIE KIMBLE,
Respondent.

Brief in Opposition to Petitioners' Application
For Writ of Certiorari

BRIEF SUBMITTED ON BEHALF OF
VERSIE KIMBLE, RESPONDENT

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit, No. 26357, is unreported as of this date; it is reprinted in full as Appendix "A" of Petitioners' application for a writ of certiorari.

QUESTIONS PRESENTED

I

Whether there is any evidence to support the Respondent's claim that he was a member of a crew of a vessel and accordingly entitled to bring suit under the Jones Act, 46 U.S.C.A. 688.

II

Whether the owner of a vessel is liable under the warranty of seaworthiness for accidents caused by lack of proper tools and equipment necessary to perform the mission of that vessel.

STATEMENT OF THE CASE

Respondent, Versie Kimble, brought this suit against his immediate employer, Noble Drilling Corporation, on two separate and distinct accidents. Claiming in each of them that he was a seaman within the meaning of the Jones Act, 46 U.S.C.A. 688 et sequitur. He also sued Chevron Oil Company in each of the cases under the General Maritime Law. In each case, Chevron Oil Company owned a stationary offshore drilling platform and a drilling tender drilling for oil in the Gulf of Mexico. All operations were conducted from the drilling tender, it serving as a supply, quarter, communication, power and command center for the actual drilling of the oil wells from the platforms. Without the drilling tender and its operation, the platforms could not be operated for drilling oil wells. All per-

sonnel were assigned to the drilling tender, upon which they lived and from which the entire operation was conducted. Chevron, who owned the offshore lease, the platform and the tender and for whom the entire operation was being conducted, had a few direct employees including the master and engineer on the drilling tender, but by and large the balance of the labor for this operation was done through subcontractors. For instance, the preparation and serving of food for all personnel was performed by one subcontractor while another subcontractor performed the roustabout work and still another, Noble Drilling Corporation, employed the actual drilling crews and furnished some of the drilling equipment. Kimble's position was that Chevron Oil Company could not avoid its basic shipowner obligations simply by inserting a subcontract relationship between it and the employees.

In the first accident there was evidence to support the conclusion that the tender was not properly equipped since Kimble's injury was directly related to a defective wrench and the failure of the drilling tender to have replaceable jaws for it. In that case the jury found negligence on the part of Noble Drilling Corporation under the Jones Act and also found Chevron Oil Company liable. They found the plaintiff guilty of negligence which contributed to the accident to the extent of 33⅓%. In the second accident, Chevron Oil Company was not found to be liable nor was the plaintiff found to be guilty of contributory negligence. A judgment was rendered against Noble Drilling Corporation on both claims and against Chevron Oil Com-

pany on the first accident, the one involving the defective wrench.

Petitioners appealed to the Fifth Circuit which affirmed the judgment on all counts and now Petitioners seek writs of certiorari from this court.

ARGUMENT

MAY IT PLEASE THE COURT:

Chevron Oil Company Liability

(a) Petitioners in their petition for writs seek to make a point of the Fifth Circuit's statement (see footnote 1, Appendix "A", page 19 Petitioners' application) to the effect that Kimble's theory of recovery from Chevron is not exactly clear. In answer, we wish to point out the following. There is no question that the drilling tender involved was a vessel. There is no question that the defendant, Chevron, owned that vessel. There is substantial evidence that the vessel failed to carry and to have in its supply room, replacement jaws for a 24" Stillson wrench and that was one of the substantial causes of Kimble's first accident. The purpose of the drilling tender was to conduct a drilling operation for which these wrenches with their replaceable jaws were a minimum requirement for safe operations. Under the General Maritime Law the owner of a vessel owes a duty of seaworthiness. When the Fifth Circuit stated that Chevron's liability rested upon the jury's findings that Kimble was a seaman, it was correct. Kimble's status as a seaman assigned to

Chevron's vessel which Chevron was operating, clearly entitles him to the warranty of seaworthiness. Therefore, Chevron could not delegate the obligation to furnish a seaworthy vessel to any subcontractor such as Noble Drilling Corporation, Kimble's immediate employer.

The doctrine of seaworthiness is not confined to seamen who perform a ship service under immediate hire to the owner but extends to those who render the service with the owner's consent or by his arrangement. The obligation of seaworthiness is peculiarly and exclusively the obligation of a shipowner and is one he cannot delegate or contract away as to any workmen within the scope of its policy. *Seas' Shipping Co. vs. Sieracki*, 66 S.Ct. 872, 328 U.S. 85, 90 L.Ed. 1099.

The fact that the defective wrench was part of the equipment furnished by virtue of a contract between the shipowner and Noble is no bar to Kimble's claim that its defectiveness breached the warranty of seaworthiness owed him by Chevron. In *Petterson v. Alaska Steamship Co., Inc.*, 205 F.2d 478, affirmed by the Supreme Court in a per curiam, *Alaska Steamship Co., Inc. vs. John O. Petterson*, 347 U.S. 396, 98 L.Ed. 798, 74 S.Ct. 601, the court held that an unseaworthy block brought aboard by an independent contractor, renders the vessel unseaworthy so that the shipowner is liable to the longshoreman who was injured as a result of the defective block.

The petitioner's claim, that, in order for Kimble to recover under Maritime Law against Chevron Oil

Company, the shipowner, he must have been injured on the vessel, is incorrect. A shipowner's warranty of seaworthiness, where applicable, is not dependent upon the injured party being aboard the vessel. *Gutierrez vs. Waterman Steamship Corp.*, 373 U.S. 206, 10 L.Ed. 2d 297, 83 S.Ct. 1185. In *Gutierrez*, the court stated:

> "The question is one of first impression although other federal courts have already recognized that case law compels this conclusion. *Strika v. Netherlands Ministry of Traffic*, 185 F.2d 555. * * * In *Strika*, while the longshoreman was working on the dock, use of improper wire cable caused a hatch cover to fall on him. * * * The court held that the tort of unseaworthiness arises out of a maritime status or relation and is therefore 'cognible by the maritime (subsidy) law whether it arises on sea or on land.'"
>
> "* * * We agree with this rendering of the case law and hold that the duty to provide a seaworthy sling and gear, including cargo containers, applies to longshoremen unloading a ship whether they are standing aboard ship or on the pier." 10 L.Ed. 2d 303.

In quoting with apparent approval from *Strika*, Supra, the court obviously considered the following language from *Strika* appropriate:

> "* * * Although we have been unable to find a decision holding that a seaman, injured ashore

> by unseaworthy ship's gear, can recover, we have no doubt that he could; and, if a seaman can, we see no reason to question the ability of a longshoreman also to recover, for that follows from the reasoning of *Seas' Shipping Co. vs. Sieracki*, Supra, especially when it is ...ad with the opinion in *Swanson vs. Marra* ..., *Inc.*, 90 L.Ed. 1045, 66 S.Ct. 869, 381 U.S. 1."

The Su... ne Court in *Gutierrez*, Supra, was further impressed ... h the extension of admiralty jurisdiction act, 62, S... te 496, 46 U.S.C. Section 740, as sweeping away any ... ts that a vessel would be liable for damages or inju... and not withstanding that such damages or injury ...d notwithstanding that such

The fact that Chevron ...ose to conduct this operation through the use of su... ntractors can be of little solace to them in view of the ...ding in *Reed vs. Yaka*, 373 U.S. 410, 83 S.Ct. 1349, 10 ...Ed. 2d 448, wherein this court held that a shipowne... obligation of seaworthiness cannot be shifted about, ...ted, or escaped by contracts or by the absence of ...ntracts; it is rooted, not in contracts, but in the h... ds of the work.

The Petitioners are trying to make a point o... dri-gue *vs. Aetna Casualty & Surety Company*, 37 ... W Week 4505, 89 S.Ct. 1835, 23 L.Ed. 2d 360. *Rodrigue*, ... decided long after this case was tried and this case wa... tried during a period when the jurisprudence indicated that the General Maritime Law of tort would apply to the owners of these platforms and, likewise,

the law of contributory negligence would be determined under maritime principles. Therefore a finding of contributory negligence would not bar recovery but merely mitigate it. The jury in this case was charged on those Maritime principles of law and not on the principles which are now thought to apply because of *Rodrigue*, Supra. If the *Rodrigue* decision is applied retroactively and it would be determined that the only basis for the Kimble's recovery against Chevron would be by the application of state law as *Rodrigue* is advanced to have held, then the case would have to be retried and the jury properly charged on that point. However, it seems clear that there is amply room for Kimble's recovery from Chevron under the warranty of seaworthiness as established by the General Maritime Law.

Kimble's Jones Act Status

It is regrettable that we must point out a clear departure from the facts in the Petitioners' statement of the case. On page 4 of the application for writs, the Petitioners' state:

> "The purpose of the Noble personnel at the drilling cites was to operate the drilling and completion rigs located on the fixed structures. *They did not perform any work on the tenders except that one of the Noble men from time to time would go on to the tenders to operate one of Noble's mud pumps located thereon.*" (Emphasis supplied)

In the interest of accuracy, we must bring to this court's attention the findings of the Fifth Circuit with respect to whether or not Kimble's duties required them to work on the tender. The Fifth Circuit stated:

> "As a driller, Kimble was in charge of one of the four-man crews that worked in alternating shifts on the platform. Thus he did most of his work on the platform, but there is considerable evidence in the record to support Kimble's claim that he also had substantial duties on board the tender. In particular, he had responsibility for making sure that the drilling mud, which was pumped from the mud room on the vessel, was properly mixed. As ancillary duties, therefore, he was charged with maintenance of the mud room equipment and mud pumps, with training and supervising his crew, with maintaining pipes, and with helping in connecting and disconnecting lines from the vessel to the platform when the vessel was moved. Moreover, his activities were always closely related to activity on the vessel, which served as a supply, personnel, equipment, fuel and command center for the entire drilling operation. A part of the reason for his first injury, for example, seems to have been the absence of necessary tools, which he had sent a member of his crew to fetch from the tool room on the vessel. * * *"
>
> "Kimble was assigned a permanent room on board the vessel; he ate and slept aboard.

> While on board he was subject to the discipline of the master of the ship and underwent many of the same hazards of the sea to which other members of the crew were subjected. There is even some evidence that he was required on occasion to perform tasks that a more traditional blue-water seaman might be expected to perform, although these were probably rare."

As to his second injury the Fifth Circuit stated:

> "At the time of Kimble's second injury * * * his responsibilities with respect to the mud operation were somewhat reduced. But numerous incidents of the relation of his employment to the vessel remained."

The Fifth Circuit succinctly set the status issue at rest in the following statement:

> "The case at bar clearly falls within the province of the jury because (1) there is undoubtedly some evidence that Kimble was assigned permanently to the vessel tending the platform on which he worked in each instance and (2) there is ample evidence that the duties Kimble performed contributed to the function and mission of the tender, since its sole reason for existence was to support the platform in drilling for oil."

It would be difficult to imagine a more firmly grounded and logical holding than the Fifth Circuit arrived at and expressed by the above phraseology. It was a jury decision and the jury had ample evidence to decide the case in the way which it did. The Fifth Circuit's function was simply to determine whether or not there was a jury case and it did, properly, determine that there was sufficient evidence upon which the jury could properly have reached the decision that it did.

The Petitioners make the specious argument that the Jones Act was never intended to apply to claimants who were injured on stationary platforms, and that the Supreme Court affirmed such a proposition in the *Rodrigue vs. Aetna Casualty & Surety Company*, 37 Law Week, 4505, 89 S.Ct. 1835, 23 L.Ed. 2d 360, case. This is an erroneous statement for many reasons, among them being the fact that the question of the Jones Act status was not an issue in the *Rodrigue* case and another being that the *Rodrigue* decision simply held that the stationary platforms are to be treated as islands belonging to the adjacent state and that the law on the adjacent state would apply when not in conflict with the applicable federal law. As the Fifth Circuit in this case said, once Kimble's status as a seaman was established, he would still be entitled to the Jones Act benefits:

> "even if we assumed that Kimble received his injuries in the heart of Louisiana mainland, so long as he was acting at the time as a seaman in the service of his ship."

> * * * "here, Kimble's status as a seaman depended not on the location of the platforms at sea, but upon his assignment to, and responsibilities on, the tender, which was unquestionably a vessel."

Both the jury and the Fifth Circuit had a clear understanding and appreciation of the issues in this matter.

CONCLUSION

For the reasons stated it is respectfully submitted that this court should deny Petitioners' application for a writ of certiorari.

Respectfully submitted,

DONALD V. ORGAN
Attorney for Versie Kimble
524-7672

CERTIFICATE

PARISH OF ORLEANS
STATE OF LOUISIANA

I, Donald V. Organ, counsel for Respondent, and a member of the bar of the United States Supreme Court, hereby affirm under oath that a copy of the foregoing opposition to petition for writs of certiorari has been served on the parties hereto by mail, in a properly addressed envelope, postage pre-paid as follows, to wit:

Clerk of United States Fifth Circuit
Court of Appeals
New Orleans, Louisiana

W. Ford Reese
Adams & Reese
847 N. B. C. Building
New Orleans, Louisiana 70112

DONALD V. ORGAN

Sworn to and subscribed before me this ____ day of January, 1970 at New Orleans, Louisiana.

NOTARY PUBLIC